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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 NIRVANA, L.L.C., a Washington  
12 Limited Liability Company,

13 Plaintiff,

14 v.

15 MARC JACOBS INTERNATIONAL  
16 L.L.C., a Delaware Limited Liability  
17 Company; SAKS INCORPORATED,  
18 d/b/a SAKS FIFTH AVENUE, a  
19 Tennessee Corporation; NEIMAN  
20 MARCUS GROUP LIMITED, L.L.C., a  
21 Delaware Limited Liability Company;  
22 and Does 1 through 10,

23 Defendants.  
24

Case No.: 2:18-cv-10743-JAK-SK

**DISCOVERY MATTER**

**STIPULATED PROTECTIVE  
ORDER**

**Judge: Hon. John A. Kronstadt**

**Magistrate: Hon. Steve Kim**

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1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any

1 purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby  
2 stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties  
3 acknowledge that this Order does not confer blanket protections on all disclosures or responses  
4 to discovery and that the protection it affords from public disclosure and use extends only to the  
5 limited information or items that are entitled to confidential treatment under the applicable legal  
6 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this  
7 Stipulated Protective Order does not entitle them to file confidential information under seal;  
8 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will  
9 be applied when a party seeks permission from the court to file material under seal.

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11 **B. GOOD CAUSE STATEMENT**

12 This action is likely to involve trade secrets, customer and pricing lists and other valuable  
13 research, development, commercial, financial, technical and/or proprietary information for which  
14 special protection from public disclosure and from use for any purpose other than prosecution of  
15 this action is warranted. Such confidential and proprietary materials and information consist of,  
16 among other things, confidential business or financial information, information regarding  
17 confidential business practices, or other confidential research, development, or commercial  
18 information (including information implicating privacy rights of third parties), information  
19 otherwise generally unavailable to the public, or which may be privileged or otherwise protected  
20 from disclosure under state or federal statutes, court rules, case decisions, or common law.  
21 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes  
22 over confidentiality of discovery materials, to adequately protect information the parties are  
23 entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of  
24 such material in preparation for and in the conduct of trial, to address their handling at the end of  
25 the litigation, and serve the ends of justice, a protective order for such information is justified in  
26 this matter. It is the intent of the parties that information will not be designated as confidential  
27 for tactical reasons and that nothing be so designated without a good faith belief that it has been  
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maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

2. DEFINITIONS

2.1 Action: The case afforded case number 2:18-cv-10743-JAK-SK.

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4. “CONFIDENTIAL ATTORNEYS EYES ONLY” Information or Items: Particularly sensitive information, including financial information or competitively valuable information of the Disclosing Party.

2.5 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.6 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “CONFIDENTIAL ATTORNEYS EYES ONLY.”

2.7 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.8 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.9 House Counsel: attorneys who are employees of a party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

1           2.10   Non-Party: any natural person, partnership, corporation, association, or other legal  
2 entity not named as a Party to this action.

3           2.11   Outside Counsel of Record: attorneys who are not employees of a party to this  
4 Action but are retained to represent or advise a party to this Action and have appeared in this  
5 Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of  
6 that party, and includes support staff.

7           2.12   Party: any party to this Action, including all of its officers, directors, employees,  
8 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

9           2.13   Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
10 Material in this Action.

11          2.14   Professional Vendors: persons or entities that provide litigation support services  
12 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
13 organizing, storing, or retrieving data in any form or medium) and their employees and  
14 subcontractors.

15          2.15   Protected Material: any Disclosure or Discovery Material that is designated as  
16 “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS EYES ONLY.”

17          2.16   Receiving Party: a Party that receives Disclosure or Discovery Material from a  
18 Producing Party.

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20   3.    SCOPE

21           The protections conferred by this Stipulation and Order cover not only Protected Material  
22 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
23 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
24 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

25           Any use of Protected Material at trial shall be governed by the orders of the trial judge.  
26 This Order does not govern the use of Protected Material at trial.

1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations imposed by  
3 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
4 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
5 claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after  
6 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this  
7 Action, including the time limits for filing any motions or applications for extension of time  
8 pursuant to applicable law.

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10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
12 Party or Non-Party that designates information or items for protection under this Order must take  
13 care to limit any such designation to specific material that qualifies under the appropriate  
14 standards. The Designating Party must designate for protection only those parts of material,  
15 documents, items, or oral or written communications that qualify so that other portions of the  
16 material, documents, items, or communications for which protection is not warranted are not  
17 swept unjustifiably within the ambit of this Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
19 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
20 unnecessarily encumber the case development process or to impose unnecessary expenses and  
21 burdens on other parties) may expose the Designating Party to sanctions.

22 If it comes to a Designating Party's attention that information or items that it designated  
23 for protection do not qualify for protection, that Designating Party must promptly notify all other  
24 Parties that it is withdrawing the inapplicable designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
26 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
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1 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
2 designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents, but  
5 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
6 Party affix at a minimum, the legend “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS  
7 EYES ONLY” (hereinafter collectively the “CONFIDENTIAL legend”), to each page that  
8 contains protected material. If only a portion or portions of the material on a page qualifies for  
9 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by  
10 making appropriate markings in the margins).

11 A Party or Non-Party that makes original documents available for inspection need not  
12 designate them for protection until after the inspecting Party has indicated which documents it  
13 would like copied and produced. During the inspection and before the designation, all of the  
14 material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting  
15 Party has identified the documents it wants copied and produced, the Producing Party must  
16 determine which documents, or portions thereof, qualify for protection under this Order. Then,  
17 before producing the specified documents, the Producing Party must affix the  
18 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion or  
19 portions of the material on a page qualifies for protection, the Producing Party also must clearly  
20 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

21 (b) for testimony given in depositions that the Designating Party identify the  
22 Disclosure or Discovery Material on the record, before the close of the deposition all protected  
23 testimony.

24 (c) for information produced in some form other than documentary and for any other  
25 tangible items, that the Producing Party affix in a prominent place on the exterior of the  
26 container or containers in which the information is stored the legend “CONFIDENTIAL.” If only  
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1 a portion or portions of the information warrants protection, the Producing Party, to the extent  
2 practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
4 designate qualified information or items does not, standing alone, waive the Designating Party's  
5 right to secure protection under this Order for such material. Upon timely correction of a  
6 designation, the Receiving Party must make reasonable efforts to assure that the material is  
7 treated in accordance with the provisions of this Order.

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9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
11 confidentiality at any time that is consistent with the Court's Scheduling Order.

12 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
13 process under Local Rule 37.1 et seq.

14 6.3 The burden of persuasion in any such challenge proceeding shall be on the  
15 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass  
16 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party  
17 to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality  
18 designation, all parties shall continue to afford the material in question the level of protection to  
19 which it is entitled under the Producing Party's designation until the Court rules on the  
20 challenge.

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22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

23 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
24 disclosed or produced by another Party or by a Non-Party in connection with this Action only for  
25 prosecuting, defending, or attempting to settle this Action. Such Protected Material may be  
26 disclosed only to the categories of persons and under the conditions described in this Order.

1 When the Action has been terminated, a Receiving Party must comply with the provisions of  
2 section 13 below (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a location and  
4 in a secure manner that ensures that access is limited to the persons authorized under this Order.

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
6 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
7 disclose any information or item designated “CONFIDENTIAL” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as  
9 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
10 information for this Action;

11 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
12 Party to whom disclosure is reasonably necessary for this Action;

13 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
14 reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement  
15 to Be Bound” (Exhibit A);

16 (d) the court and its personnel;

17 (e) court reporters and their staff;

18 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to  
19 whom disclosure is reasonably necessary for this Action and who have signed the  
20 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (g) the author or recipient of a document containing the information or a custodian or  
22 other person who otherwise possessed or knew the information;

23 (h) during their depositions, witnesses, and attorneys for witnesses, in the Action to  
24 whom disclosure is reasonably necessary provided: (1) the deposing party requests that the  
25 witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any  
26 confidential information unless they sign the “Acknowledgment and Agreement to Be Bound”  
27 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
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1 transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be  
2 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
3 under this Stipulated Protective Order; and

4 (i) any mediator or settlement officer, and their supporting personnel, mutually agreed  
5 upon by any of the parties engaged in settlement discussions.

6 7.3 Disclosure of “CONFIDENTIAL ATTORNEYS EYES ONLY”  
7 Information or Items. Material so designated shall only be produced or disclosed to persons  
8 listed in 7.2 (a), (c)-(g), and 7.2 (h) to the extent the deponent or trial witness would otherwise be  
9 entitled to view the information.

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11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
12 LITIGATION

13 If a Party is served with a subpoena or a court order issued in other litigation that compels  
14 disclosure of any information or items designated in this Action as “CONFIDENTIAL,” or  
15 “CONFIDENTIAL ATTORNEYS EYES ONLY” that Party must:

16 (a) promptly notify in writing the Designating Party. Such notification shall include a  
17 copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to issue in  
19 the other litigation that some or all of the material covered by the subpoena or order is subject to  
20 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;  
21 and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
23 Designating Party whose Protected Material may be affected.

24 If the Designating Party timely seeks a protective order, the Party served with the  
25 subpoena or court order shall not produce any information designated in this action as  
26 “CONFIDENTIAL” or “CONFIDENTIAL ATTORNEYS EYES ONLY” before a  
27 determination by the court from which the subpoena or order issued, unless the Party has  
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1 obtained the Designating Party's permission. The Designating Party shall bear the burden and  
2 expense of seeking protection in that court of its confidential material and nothing in these  
3 provisions should be construed as authorizing or encouraging a Receiving Party in this Action to  
4 disobey a lawful directive from another court.

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6 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
7 LITIGATION

8 (a) The terms of this Order are applicable to information produced by a Non-Party in  
9 this Action and designated as "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS EYES  
10 ONLY." Such information produced by Non-Parties in connection with this litigation is  
11 protected by the remedies and relief provided by this Order. Nothing in these provisions should  
12 be construed as prohibiting a Non-Party from seeking additional protections.

13 (b) In the event that a Party is required, by a valid discovery request, to produce a  
14 Non-Party's confidential information in its possession, and the Party is subject to an agreement  
15 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

16 (1) promptly notify in writing the Requesting Party and the Non-Party that some  
17 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

18 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order  
19 in this Action, the relevant discovery request(s), and a reasonably specific description of the  
20 information requested; and

21 (3) make the information requested available for inspection by the Non-Party, if  
22 requested.

23 (c) If the Non-Party fails to seek a protective order from this court within 14 days of  
24 receiving the notice and accompanying information, the Receiving Party may produce the Non-  
25 Party's confidential information responsive to the discovery request. If the Non-Party timely  
26 seeks a protective order, the Receiving Party shall not produce any information in its possession  
27 or control that is subject to the confidentiality agreement with the Non-Party before a  
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determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

1           12.2   Right to Assert Other Objections. By stipulating to the entry of this Protective  
2 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
3 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,  
4 no Party waives any right to object on any ground to use in evidence of any of the material  
5 covered by this Protective Order.

6           12.3   Filing Protected Material. A Party that seeks to file under seal any Protected  
7 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under  
8 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If  
9 a Party's request to file Protected Material under seal is denied by the court, then the Receiving  
10 Party may file the information in the public record unless otherwise instructed by the court.

11  
12   13.   FINAL DISPOSITION

13           After the final disposition of this Action, as defined in paragraph 4, within 60 days of a  
14 written request by the Designating Party, each Receiving Party must return all Protected Material  
15 to the Producing Party or destroy such material. As used in this subdivision, "all Protected  
16 Material" includes all copies, abstracts, compilations, summaries, and any other format  
17 reproducing or capturing any of the Protected Material. Whether the Protected Material is  
18 returned or destroyed, the Receiving Party must submit a written certification to the Producing  
19 Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that  
20 (1) identifies (by category, where appropriate) all the Protected Material that was returned or  
21 destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
22 compilations, summaries or any other format reproducing or capturing any of the Protected  
23 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
24 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
25 correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
26 consultant and expert work product, even if such materials contain Protected Material. Any such  
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1 archival copies that contain or constitute Protected Material remain subject to this Protective  
2 Order as set forth in Section 4 (DURATION).

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4 14. Any violation of this Order may be punished by any and all appropriate measures including,  
5 without limitation, contempt proceedings and/or monetary sanctions.

6  
7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8 DATED: June 24, 2019  
9 /s/ Mark S. Lee  
Attorneys for Plaintiff NIRVANA, L.L.C.

10 DATED: June 24, 2019  
11 /s/ Michael J. Zinna  
12 Attorneys for Defendants  
13 Marc Jacobs International LLC, Saks Incorporated, and Neiman Marcus Group Limited, LLC

14 **ATTESTATION OF SIGNATURES**

15 I hereby attest that the concurrence in the filing of this document has been obtained from the  
16 signatory indicated by a “conformed” signature (/s/) within this e-filed document.

17 Executed on June 24, 2019.

18 /s/ Michael J. Zinna  
19 Michael J. Zinna  
Attorney for Defendants.

20 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

21  
22 DATED: June 25, 2019

23   
24

25 Steve Kim  
26 United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3  
4 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or  
5 type full address], declare under penalty of perjury that I have read in its entirety and understand  
6 the Stipulated Protective Order that was issued by the United States District Court for the Central  
7 District of California on [date] in the case of Nirvana, L.L.C. v. Marc Jacobs International L.L.C.  
8 et al., Case No. 2:18-cv-10743-JAK-SK. I agree to comply with and to be bound by all the terms  
9 of this Stipulated Protective Order and I understand and acknowledge that failure to so comply  
10 could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that  
11 I will not disclose in any manner any information or item that is subject to this Stipulated  
12 Protective Order to any person or entity except in strict compliance with the provisions of this  
13 Order. I further agree to submit to the jurisdiction of the United States District Court for the  
14 Central District of California for the purpose of enforcing the terms of this Stipulated Protective  
15 Order, even if such enforcement proceedings occur after termination of this action. I hereby  
16 appoint \_\_\_\_\_ [print or type full name] of  
17 \_\_\_\_\_ [print or type full address and telephone  
18 number] as my California agent for service of process in connection with this action or any  
19 proceedings related to enforcement of this Stipulated Protective Order.  
20

21 Date: \_\_\_\_\_

22 City and State where sworn and signed: \_\_\_\_\_

23  
24 Printed name: \_\_\_\_\_

25  
26 Signature: \_\_\_\_\_  
27  
28